



February 3, 2023

**VIA ECF**

Hon. Mary Kay Vyskocil  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

USDC SDNY  
DOCUMENT  
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Re: *Daniel Zerafa v. Midas Property Management Corp., et al.*  
Docket No.: 22-cv-01755 (MKV)

Dear Judge Vyskocil:

This firm represents Plaintiff Daniel Zerafa, who brought the above-referenced matter against Defendants Midas Property Management Corp., Midas Management Assoc. Inc., Michael Padernacht, Daniel Padernacht, Christopher Lim, Gerard Karlen, Nicholas Casucci, (collectively as the “Midas Defendants”), The Herkimer Executive House, Inc., and 29-33 Convent Avenue HDFC (all collectively as “Defendants”) for alleged violations of the Fair Labor Standards Act, New York Labor Law and New York common law. Having reached a settlement in principle, the Court entered an order directing the parties to submit a motion for approval of the parties’ settlement agreement, pursuant to Cheeks v. Freeport Pancake House, Inc., 796 F.3d 199 (2d Cir. 2015), by February 3, 2023. Plaintiff now writes with the consent of all Defendants to request an extension of time to submit Plaintiff’s motion for approval.

Plaintiff sought two prior extensions of the deadline to submit a motion for approval, with the first being based the undersigned and my family suffering from Covid-19 and soon after the flu, which caused me to be out of the office for extended periods. The second request was a one-week extension of time for the parties to obtain the necessary signatures for their settlement agreement and to then submit their motion for approval of the settlement agreement. Both requests were granted. Plaintiff, The Herkimer Executive House, Inc., and 29-33 Convent Avenue HDFC have executed the parties’ settlement agreement. Although counsel sought to obtain all necessary signatures by today, counsel for the Midas Defendants represented earlier today that some of his clients have not yet been able to execute the settlement agreement due to their lack of availability, but are expected to be able to execute the settlement agreement on Monday or Tuesday of the coming week. Plaintiff has prepared his motion for approval and is prepared to submit his motion as soon as all parties execute the agreement.<sup>1</sup>

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<sup>1</sup> Attached as Exhibit A is a draft copy of the motion for approval that Plaintiff intends to submit with the signed settlement agreement.

Accordingly, out of necessity, Plaintiff requests, with the consent of all Defendants, an extension of time to submit Plaintiff's motion for approval from Friday, February 3, 2023 until Wednesday, February 8, 2023. Alternatively, Plaintiff requests permission to submit his motion for approval with a partially executed settlement agreement, which the parties could promptly supplement with the fully executed settlement agreement soon after. This extension, if granted, will not impact any other deadlines.

The parties have strived to meet and expected to meet the Court's February 3, 2023 deadline. The parties have reached the final terms of their formal settlement agreement, several parties have executed the agreement and Plaintiff is prepared to file his motion for approval of the agreement as soon all parties have executed the agreement. Because of this, the parties believe that returning this matter to litigation – or setting a deadline for Defendants' anticipated motions to dismiss the Amended Complaint, which is the stage of the litigation immediately prior to mediation – would require the Court and the parties to expend unnecessary resources and expenses in light of the parties' settlement. However, if the Court is not inclined to grant the parties' requests for an extension or to permit Plaintiff to submit his motion with a partially executed settlement agreement (which would be promptly supplemented with a fully executed agreement), then the parties request that the Court set a deadline for the Defendants to submit their anticipated motions to dismiss the Amended Complaint for thirty days from the Court's order to permit Defendants time to prepare those motions.

We thank the Court for its consideration of these requests.

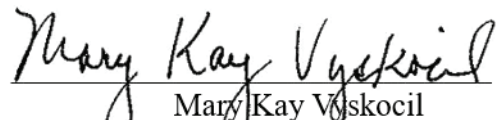
Respectfully submitted,

/S/ David D. Barnhorn, Esq.  
DAVID D. BARNHORN, ESQ.

C: All Counsel of Record *via* ECF

**Granted. SO ORDERED.** Motion with fully executed agreement due February 8, 2023.

Date: February 7, 2023  
New York, New York

  
Mary Kay Vyskocil  
United States District Judge